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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

C.W.P. No. 1299 of 1980
Date of decision: 14.11.2007

Dalbara Singh **...Petitioner**

Versus

The State of Punjab and others **...Respondents**

CORAM: HON'BLE MR. JUSTICE RAJESH BINDAL

Present: Mr. Amit Chopra, Advocate for the petitioner

Mr. Ram Lal Gupta, Additional Advocate General, Punjab for respondents.

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RAJESH BINDAL, J.

The prayer made in the present petition is for issuance of a direction to the respondents to grant the benefits of military service for seniority, increments and consequential benefits.

Briefly the facts, as stated in the petition, are that petitioner joined Indian Army on August 24, 1968. He participated in the Pakistan aggression of 1971. However, he was invalidated out of the Army on medical grounds under Army Rule 13 (3) III (iii), on January 11, 1974. After release from Army, the petitioner was duly selected and appointed as Clerk with the respondents through the Punjab Subordinate Services Selection Board. His appointment was against the vacancy reserved for the ex-serviceman. The petitioner joined his duty on September 28, 1977. As the petitioner was entitled to fixation of his seniority in terms of the provisions of the Demobalised Armed Forces Personnel (Reservation of Vacancies in Punjab State non Technical Services) Rules, 1968 (for short "the 1968 Rules"), he moved various representations to the respondents, which yielded no result. Under these circumstances, the petitioner filed the present writ petition in this Court relying upon the provisions of the 1968 Rules.

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The claim made by the petitioner in the writ petition is contested by respondents by filing written statement. It is submitted that as the petitioner did not render military service during the period of emergency between November 1, 1962 to January 10, 1968, in terms of the provisions of the Government National Emergency (Concession) Rules, 1965 (for short "the 1965 Rules"), and the 1968 Rules, the period of service of the petitioner in the armed forces could not be considered for grant of benefits sought by the petitioner. Earlier the petitioner was erroneously granted the benefits of military service, which were later on withdrawn vide order dated May 22, 1984 after giving a show cause notice. The judgment of Hon'ble Supreme Court in **Ex. Capt. A.S.Parmar and others Vs. State of Haryana and others AIR 1986 Supreme Court, 1183** was relied upon.

Heard learned counsel for the parties and perused the paper book.

As is evident from the documents placed on record, the initial prayer of the petitioner was for issuance of a direction to the respondents to grant him the benefit of military service rendered by him from August 24, 1968 to January 11, 1974 for seniority and also other consequential benefits. During the pendency of the writ petition respondents filed short written statement on May 23, 1980 stating therein that benefit claimed by the petitioner has already been granted vide order dated May 23, 1980 and in terms thereof, the writ petition was dismissed as infructuous on May 26, 1980. Though much details are not available on record, however, a perusal of the order dated February 26, 1986 passed by Hon'ble the Supreme Court in Review Petition No. 419 of 1985 in Civil Writ Petition No. 12727 of 1984 (State of Punjab and others Vs. Dalbara Singh) shows that this Court was directed to dispose of the writ petition No. 1299 of 1980 on merits.

There is an order on record as Annexure P-14 dated May 22, 1984 withdrawing the benefits of military service, granted to the petitioner vide earlier order in his favour passed on May 23, 1980. A perusal of the order shows that the same was passed after issue of show cause notice to the petitioner and considering the reply thereof. The primary reason was that the benefit of military service was admissible only to those persons, who

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served the armed forces during the emergency period i.e. from October 26, 1962 to January 9, 1968 and in the present case the petitioner had joined the military service only on August 24, 1968. It may be noticed here that order dated May 22, 1984 withdrawing the benefits of military service granted to the petitioner by earlier order dated May 23, 1980 is not under challenge in the writ petition as prayer in the writ petition remains only for a writ of Mandamus directing the respondents to grant the benefits of military service rendered by the petitioner.

Undisputed facts which emerge out of the pleadings of the parties are that the petitioner joined armed forces on August 24, 1968 and served till January 11, 1974. The period of emergency was from October 26, 1962 to January 9, 1968. In this factual matrix the claim of the petitioner is to be considered keeping in view the law on the issue. Following its earlier judgment in **Ram Janam Singh Vs. State of U.P. and another (1994) 2 Supreme Court Cases 622** Hon'ble the Supreme Court in **Chittaranjan Singh Chima and another Vs. State of Punjab and others 1997 (2) Recent Services Judgments 159** held that benefits of military service in terms of the 1965 Rules is admissible to an employee only for the period he rendered the service during the period of emergency and that too to those employees, who had joined the military service during the period of emergency and not to others, who joined during the peace time as they were regular personnels, who had taken the military service as career and not at a time when call was given for service to the Nation in the case of emergency. In Ram Janam's case (supra) Hon'ble the Supreme Court had opined as under:-

> 12. But, we fail to understand as to how persons who joined after the emergency was over i.e. after January 10, 1968 and before December 3, 1971 when another emergency was imposed in view of the foreign aggression, can be treated on a par or on the same level. It need not be pointed out that such persons were on the lookout for a career and joined the Armed Forces of their own volition. It can be presumed that they were prepared for

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the normal risk in the service of the Armed Forces. Those who joined Armed Forces after November 1, 1962 or December 3, 1971, not only joined Armed Forces but joined a war which was being fought by the nation. If the benefits extended to such persons who were commissioned during national emergencies are extended even to the members of the Armed Forces who joined during normal times, members of the Civil Services can make legitimate grievance that their seniority is being affected by persons recruited to the service after they had entered in the said service without there being any rational basis for the same.

13. In the case of *Dhan Singh v. State of Haryana* this Court considered as to whether persons commissioned before November 1, 1962 were entitled to add the period of army service, which admittedly included their service during the period of emergency, was answered in the negative. It was held that the relevant rule only extended the benefit of army service to persons who joined Army on or after November 1, 1962 after declaration of emergency because such persons belonged to a separate class for preferential treatment. In the cse of *Union of India v. Dr.S.Krishna Murthy* it was said that persons who had joined after the declaration of emergency, had voluntarily offered their services for the defence of the country during the period of emergency. They belonged to a separate class and there was no question of discrimination in giving any benefit in matters of seniority by the rules which were under challenge. The rules with which we are concerned, were considered by this Court in the case of *Narendra Nath Pandey v. State of U.P.* and it was held that benefits by the rules aforesaid had been given to persons who were either Emergency Commissioned Officers or Short

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Service Commissioned Officers of the Armed Forces of the Union of India, who had been commissioned on or after November 1, 1962 during the Indo-Chinese War and were demobilised from Armed Forces in or about 1968,; such persons had rendered services to the country during the emergency when the nation's security was in peril due to external aggression.

14. Can it be said that the persons who had joined Army after the declaration of emergency due to foreign aggression and those who joined after the war came to an end stand on the same footing? Those who joined Army after revocation of emergency joined Army as a career. It is well known that many persons who joined army service during the foreign aggression, could have opted for other career or service. But the nation itself being under peril, impelled by the spirit to serve the nation, they opted for joining Army where then risk was writ large. No one can dispute that such persons formed a class by themselves and by rules aforesaid an attempt has been made to compensate those who returned from war if they compete in different services. According to us, the plea that even persons who joined army service after cessation of foreign aggression and revocation of emergency have to be treated like persons who have joined army service during emergency due to foreign aggression is a futile plea and should not have been accepted by the High Court. It need not be impressed that whenever any particular period spent in any other service by a person is added to the service to which such person joins later, it is bound to affect the seniority of persons who have already entered in the service. As such any period of earlier service should be taken into account for determination of seniority in the later service only for some very

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> compelling reasons which stand the test of reasonableness and on examination can be held to be free from arbitrariness.

In the present case that the petitioner joined service on August 24, 1968 after the period of emergency was already over on January 10, 1968. Meaning thereby that he had opted the defence service as a career. The 1965 Rules and the 1968 Rules are meant for applicable to a special class of armed forces personnels, who had joined the service with a spirit to serve the Nation at the need of the hour. The same view was expressed by Hon'ble the Supreme Court in Chitranjan Singh Chima's case (supra), which was further referred to in **State of Punjab Vs. Hardev Singh and others 2001 (2) Recent Services Judgments 509.**

Learned counsel for the petitioner has not been able to cite any judgment taking a view contrary to what has been referred to above to the effect that even if a person joined the military service during the period when there was no emergency declared, he would still be entitled to benefits of the 1965 Rules or the 1968 Rules.

Before parting with the judgment another fact needs to be noticed i.e. the order passed by this Court on October 18, 2006, which is in the following term:-

> "After hearing learned counsel for the parties at length and having regard to the amended definition of "Released Indian Armed Forces Personnel" as contained in Rule 11 (d) of the Demoblised Armed Forces Personnel (Reservation of Vacancies in the Punjab State Non-Technical Services) Rules, 1968, learned counsel for the petitioner as well as Mr. Cheema, learned Sr. DAG, Punjab would seek instructions before the adjourned date as to whether or not the petitioner is ready to seek voluntary retirement and if he agrees whether his request can be entertained by the State Government without effecting any recovery from him till the date the matter is disposed of by this Court."
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> This Court was informed by the learned Additional Advocate

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General, Punjab that the petitioner never made a request for voluntary retirement or any other claim and in fact retired from service on attaining the age of superannuation on September 30, 2007. Meaning thereby that the petitioner did not avail of the opportunity given to him to get the matter re-considered by the respondents.

For the reasons mentioned above, I do not find any merit in the petition and the same is dismissed.

November 14, 2007 **(Rajesh Bindal)**
Pka **Judge**

Refer to Reporter